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ABSTRACT

These guidelines highlight some important administrative and legal aspects of school construction projects (particularly under Alaskan law) and propose ways to address these issues during the process of selecting and contracting with school architects. The document first emphasizes the role of the architect, then reviews activities that should predate architect selection, including determining, perhaps with the assistance of an educational facilities planner, both the scope of the project and the range of services required. The guide next covers architect selection, which involves choosing and establishing an appropriate selection process, soliciting proposals, screening applicants, and making the final choice. The guide also provides advice on negotiating suitable contracts with architects, suggesting how the specific services to be performed can be identified, how fees may be charged, how rates of expense reimbursement can be set, and how design cost limits can be figured given construction costs. The guide's final section looks at several aspects of contract development and execution that have caused problems, including using form contracts, correlating contracts, stipulating who the contracting agencies are to be, writing suitable indemnity and damage clauses, assessing insurance coverage, handling disputes, and providing for redesign options. (PGD)

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Selection & Compensation of Architectural Services for School Facility Construction

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Selection and Compensation of Architectural Services for School Facility Construction

Guidelines for School Districts

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INTRODUCTION

The construction of an educational facility is a major milestone for a school administrator and the local school board. A construction project, perhaps more than any other act of school officials, affects the structure of the educational program for twenty or thirty years in the future. Policies may change; buildings remain. A well-planned, well constructed educational facility can serve as a lasting monument to the wisdom and care of the administration and community which planned it. Unfortunately, the converse is also true.

These Guidelines have been developed in order to highlight some of the more important administrative and legal aspects of construction projects and the way these may be addressed through the selection of and contracting for design services. The purpose of the Guidelines is to assist users to a successful completion of a school construction project by anticipating and thereby avoiding some of the more common problems. To some, who may have great experience and familiarity with administration of construction projects, the following comments may seem obvious. Others may have had little experience in this field and will find the concepts novel. In either event, if the Guidelines assist school officials in thinking through the process, from the earliest stages to completion of the facility, our aim will have been accomplished.

ROLE OF THE ARCHITECT

The architect is an essential member of the project team, from initial conceptualization of the project through substantial completion of the building itself. It is the architect who has the primary responsibility for translating educational program concepts and needs into educational facilities that are effective learning spaces. The architect must understand the desires of the client as well as the technical aspects of the project; therefore, in selecting an architect, intangible considerations, such as mutual respect, trust and compatibility of working styles, can be as important as technical competence. Dr. Basil Castaldi, a well-known authority on educational facilities planning, states it well:

> In and of itself, however, the employment of an architect does not automatically assure a board of higher authority that he will design a school to satisfy their institutional needs. The architect should be creative, competent, flexible, understanding, perceptive of educational needs, open-minded, aesthetically oriented but cost-conscious, imaginative, and practical, and cooperative in spirit. (1.)

PRE-SELECTION ACTIVITIES

Success in selecting the architect, whether an individual or a firm, who can bring the attributes listed above to a school construction project depends in large part on how thoroughly a district conducts pre-selection activities.

A. Determining the Scope of the Project

In most cases, much of the pre-design work for a facility should be accomplished by the district before the selection process begins. Prior to seeking funds, most districts will

have had to establish the needs for additional or refigured space based on enrollment projections, changes in the educational program, review of existing space and an analysis of alternative facilities or space usage. At the minimum, districts should have a fairly detailed idea of the educational space requirements of the new or remodeled facilities which, in turn, provide estimates of square footage size and potential costs. While it is sometimes necessary to involve an architect in the preliminary feasibility studies, particularly in the analysis of exisiting facilities, the essential pre-design work revolves around educational rather than architectural issues.

B. Use of Educational Facilities Planners

Should a district desire outside assistance at this point of the project, the services of an educational facilities planner may prove useful. Educational facility planners can provide assistance from the earliest stages of the project. Typically, educational facility planners are called in to conduct an assessment of need for new or reconfigured space, perform feasibility and marketing studies, provide preliminary size and cost estimates and develop educational specifications. Since each of these activities generally will be completed by the district prior to the selection of the architect, a brief explanation of what each entails is provided below.

1. Feasibility Studies contain such elements as enrollment projections and future space needs, alternative means of achieving needed space, preliminary scope of project, etc. In most cases, feasibility studies are conducted on site and with considerable administrator/board/community input.

2. Preliminary Cost Estimates are based on the feasibility study in that they are derived from space needs. Estimates of construction costs are based on costs per square foot figures from current construction projects in the area. Because school facilities often contain specialized spaces (performing arts, vocational education, etc.) which have higher per-square-foot construction costs, an educational facilities planner can be helpful in seeking out comparable figures for preliminary costs figures. A professional construction cost estimator can be retained at this point, if the district project is such that standard estimates will not suffice.

3. Educational Specifications are the key to the success of a school construction or remodeling project. It is during this phase of project planning that everyone concerned with the new space—teachers, administrators, students, board members and the community at large—has the opportunity to present ideas, thoughts and dreams concerning the facility. Well-developed educational specifications not only go far in assuring that the completed facility will support the planned educational program of the district; they can also be the basis of a creative, original design which makes a significant contribution to the learning process. Time spent in conceptualizing the program to be offered in the new space, the relationships between the various educational activities which will be carried out therein, and attention to the smallest detail which can maximize the educational value of the envisioned spaces will reap considerable benefits in the design and construction phases of the project, as well as when the building is finally in use. An educational facilities planner or an architect who is trained in conceptualizing and describing educational spaces can be of great help to the district and community in this activity.

Education facilities planners can work with the district through the architect selection phase of the project, including negotiation of architect services fees and contracts. Some planning firms also offer project management services. During this pre-design period of the project, the district should explore all options for project management services and make its decisions about the use of consultants, prior to bringing on the architect. If project management is contracted to a service

agency, communication protocols and channels must be clearly identified to avoid confusion or misunderstandings during the life of the project.

C. Determining the Range of Architectural Services

Districts which wish to obtain the most effective architectural services at the most reasonable price will spend time before the selection of the architect in determining the range of services it will need. Certain services are required from the design professional during each phase of the project. In addition, architects can provide supplemental services over a broad range. These basic and additional services are well described in various publications, and will be treated at more length under the section on Negotiation of Services and Fees of these Guidelines. Districts are encouraged to review this section prior to architect selection to obtain at least a general idea of the scope of services to be requested.

THE SELECTION PROCESS

The competitive bid process generally does not apply to the procurement of professional services, such as that of an architect or architectural firm. Districts are free to solicit and choose design services in many different fashions, although city/borough districts may be subject to local ordinances. And all districts, of course, must exercise prudence in the management of public funds.

A. Choosing the Appropriate Process

The means used to select an architect should depend somewhat on the size and scope of the contemplated project. For small projects—under $500,000 or so—where costs of obtaining and screening proposals from several firms may exceed the benefits of having multiple proposals, the district may chose an architect who has performed successfully for the district in the past or set up a shorter version of the process described below.

For larger projects, however, it is generally to the district's advantage to use a process which will allow for comparison between several individuals or firms. The discussion which follows focuses on setting up and implementing a comparative selection process which has proven effective in selecting design services for more ambitious school construction projects.

B. Establishing the Selection Process

Where a district handles its own school construction projects, the final selection of the architect or an architectural firm is the responsibility of the local school board. However, in most cases, boards will wish to delegate the responsibility for initial screening and review of potential candidates to the administration, a committee or a services agency. It is recommended that the initial screening be conducted by more than one person. The initial screening process should result in forwarding to the board a "short list" of between three to five candidates for final consideration.

Prior to seeking proposals from interested firms, the following procedures will need to be determined:

1. solicitation of potential applicants, which includes the decision to solicit from a few known firms or to advertise widely; to solicit only from local firms or from a larger geographic area; etc.

2. preparation of project information which will be used by prospective applicants to prepare their presentations.

3. determination of information to be requested from responding firms, at least in general form. In most cases, the screening criteria will dictate the areas to which firms will respond.

4. determination of screening criteria, which will spell out in some detail the items to be used in the review of proposals; the weights which will be assigned to the various items; treatment of "joint ventures" or multiple-firm proposals; etc.

5. further review of candidates on the "short list" of firms or individuals who have been rated highest in the initial review. All of the firms on the "short list" should be technically capable of performing the required services. Because of the importance of intangibles, such as rapport, personality, ability to listen, etc., it is strongly recommended that individuals and firms on the "short list" be interviewed by the full school board or the board-designated selection committee. Interview schedules, a list of topics to be covered in the interviews and a method of evaluating interviewees should be determined prior to inviting selected firms to participate.

6. research on responding individuals or firms, which will require followup of references given by respondents; actual visits to completed facilities designed by the responding firms may be considered for the top firms identified in the initial screening.

C. Soliciting Proposals

Once the selection procedures have been established, the district will begin to solicit proposals. Again, an educational facilities planner can be retained to perform this task, complete the initial screening and submit a "short list" to the

district. Whoever performs this task, however, should have information on the following areas prepared to send out to parties interested in presenting a proposal:

1. project summary, or a brief description of the proposed facility, including intended use, location, square footage and total funds available for both design and construction.

2. community description, which contains information about the location, ethnic and economic background, climate and other pertinent characteristics of the community.

3. description of the educational philosophy and program of the district, including any particular instructional methods, grade groupings or other characteristics which have design implications.

4. site description, including any particular characteristics which will affect design options.

5. funding sources and amounts, including information about phasing or other constraints.

6. timeline which indicates the anticipated dates of architect selection, design completion and substantial completion of construction.

7. scope of services requested, which includes any additional services beyond the basic services normally requested.

8. selection procedures, which indicate the events and timeline for the selection process.

9. selection criteria, which detail those areas of experience and capacity which will be weighed in the selection process.

10. description of proposal format, which should speak to any unusual formatting requirements of the school district. In general, firms and individuals should be allowed to format responses in any manner which yields the requested information.

11. deadline for submission, indicating to whom and where the proposals should be sent. The district should also indicate the number of copies required.

D. Screening the Applicants

1. review of written proposals

Once proposals have been received, all proposals should receive an initial review utilizing the rating criteria and weighting system established earlier. A suggested Performance Rating Review, developed by the South East Regional Resource Center, is included in Appendix A. Other checklists or methods which result in a uniform analysis of all submitted proposals can be developed by the district. On the basis of this initial screening, a "short list" of the three to five most qualified firms is prepared.

2. interviews of "short list" firms or individuals

Experience has shown that a formal interview before the full board or the architect selection committee is the most useful method of evaluating the intangible characteristics which contribute greatly to a good district/architect working relationship. Interviews should be carefully planned to assist the board or selection committee make judgements on the human relations as well as the technical skills of the persons interviewed. A standard format and a general list of questions determined beforehand will help the interviewers to make the best opportunity of the time allowed and will assure that each firm or individual is asked to respond to the same types of inquiries.

3. reference checks

In addition to participating in an interview, firms and

individuals on the "short list" should undergo a background check of references. Much can be learned—and much grief avoided—if the district or its agent takes a little time to call other districts or organizations which have been clients of the firms under consideration. Results of this background check should be given to the board or selection committee along with the firms' written proposals.

In some cases, actual visits to other completed facilities which have been designed by the firm(s) under consideration can be helpful. Generally, the facilities of only the top two contenders would be viewed, given the time and travel funds involved. However, if such visits are conducted, information about the effectiveness of the facility should be obtained from the users (teachers, students, maintenance personnel, etc.,) as well as from the administration or the board.

E. Selection of Preferred Firm or Individual

Upon completion of the screening activities, the district should list the firms in the order of preference and begin to negotiate a fee with the first choice. If negotiations are not successful, the district can then proceed to negotiate with the next listed firm. If the district cannot decide between two or more firms, the district may request an additional interview or additional written information. However, the district and board must avoid asking contending firms to provide design sketches, models, or other services as part of the selection process. Requests for such "free" services put the architect in the position of having to protect his business interests

by increasing fees to all clients to counter the additional risk and expense in securing a commission.

Although cost considerations are generally not a part of the selection process in the same manner as in a competitive bid situation, boards may wish to consider fee schedules in coming to a final determination of the architect. However, in most cases, only the general fee structure is available for comparison; architects or firms are unlikely to respond favorably to requests for a quote for services until they can fully review the owner's scope of work. Determination of design costs are usually arrived at through negotiations with the successful proposer. Items to be considered in such negotiations are covered in the following section of these Guidelines.

NEGOTIATION OF SERVICES AND FEES

Once the architect has been selected, negotiations should take place between the district and the architect to determine the scope of services to be provided and the fees which will be paid. It is important for districts to realize that, because selection of architectural services usually is not governed by laws surrounding competitive bid projects, districts may retain considerable flexibility in negotiating the terms and conditions of the architectural contract. In order to make the most of this flexibility, districts are advised to have a firm idea of the scope of services to be requested well ahead of sitting down to discuss a contract.

A. Final Determination of Scope of Services

The services requested of an architectural firm can be

characterized as "basic", i.e., those which are performed normally by a design professional in order to move the project through construction, and "additional", i.e., services which may be required or desired above those normally performed.

Basic services are described by the Alaska Department of Transportation and Public Facilities as follows:

1. schematic design services shall consist of the preparation of drawing and other documents which illustrate the general scope, scale, and relationship of project components for approval by the contracting agency. Typical services include: civil, structural, mechanical and electrical concepts; architectural, interior and landscape design concepts; estimate of probable construction costs and consultation and review.

2. design development services shall consist of the preparation, from the approved schematic design, for approval by the contracting agency, drawings and other documents to fix and describe the size and character of the entire project as to structural, mechanical, and electrical systems, materials and such other essentials as may be appropriate. Typical services include: civil, structural, mechanical and electrical design development; architectural, interior and landscape design development; statement of probable construction costs and regulatory agency review.

3. construction document services shall consist of the preparation, from the approved design development documents, for approval by the contracting agency, drawings and specifications setting forth in detail the requirements for construction of the entire project. Typical services include: complete civil, structural, mechanical and electrical construction documents; architectural working documents; more detailed statement of probable costs and document review/coordination.

4. bid services shall consist of the preparation, from the approved construction documents, for approval by the contracting agency, bid documents for obtaining bids and awarding contracts for construction. Typical services include: preparation of bidding documents; bid procedure; bid evaluation; assistance, with owner's attorney, on construction contract agreements and analysis of alternatives/substitutions.

5. construction services shall consist of providing assistance to the contracting agency in its administration of the construction contract commencing with award and terminating following final acceptance of project and contracting agency's approval of the architect's final invoice for all services throughout the construction phase. Typical services include: limited construction observation; shop drawings review; review of contractor's pay requests; change order review/approval; testing and inspection coordination and project close out. (2.)

In addition to the above five basic services areas, the American Institute of Architects (AIA) identifies three other phases of a construction project during which the services of an architect may be required:

1. pre-design, where an architect may be involved with facility programming; space schematics; project budgeting; surveys of existing facilities; economic feasibility studies; and project scheduling.

2. site analysis, in which architectural services are typically required for site analysis and selection; site development and utilization studies; environmental studies; zoning processing assistance; utility studies; and project budgeting.

3. post-construction, at which time the architect provides maintenance and operational programming for the electrical and mechanical aspects of the facility; start-up assistance; record drawings; warranty review; and post-construction evaluation. (3.)

Both the Department of Transportation and Public Facilities and AIA identify additional or supplemental services which may be requested of architects or architectural firms. Such services will vary from project to project; the following list is illustrative, but not inclusive:

1. perform preliminary energy audits;

2. attend meetings or conduct hearings to facilitate design review and obtain required approvals;

3. provide detailed estimates of construction costs;

4. prepare Mylar record prints of significant changes made during the construction process;

5. serve as a member of the Art Advisory Committee to determine the type and site of public art works;

6. determine if proposed site has historic, prehistoric, or archeological value under applicable federal or state statutes;

7. select loose equipment;

8. design special furnishings;

9. perform life-cycle costs analysis;

10. conduct special studies or design special computer applications;

11. prepare specialized or elaborate graphics or models for presentations. (4.)

Appendix B: Standard Statement of Services for General Architectural and Engineering Design of the Department of Transportation's Professional Services Agreement provides a more detailed description of both basic and additional services. Copies can be obtained from the Alaska Department of Education, Pouch F., Juneau 99811.

The American Institute of Architects publishes a Compensation Management System which provides a checklist of both basic and supplemental services. The checklist provides a convenient method for districts in determining the scope of architectural services desired. Copies of the checklist (AIA Form F819) can be obtained from the American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006.

As mentioned above, districts should have a fairly firm idea of the scope of services to be requested of the architect before selection, particularly where additional services are

required. The scope of services may be modified during the negotiation process, but it should not be left to the architect or architectural firm to determine what will or will not be provided.

B. Determination of Fees

The total cost of architectural services, of course, will be dependent upon the scope of services required. Once the scope is set, architects will generally indicate the amounts to be charged for basic services, broken down by phase, such as schematic design, etc, and each selected additional service. Charges will include professional fees and expenses, both of which are negotiable. Compensation may be by a single method of payment for all of the work required, plus agreed-upon expenses, or may involve different methods for different elements of work. Districts should be aware of the more common methods of payment utilized for school facility design services: lump sums, specific hourly rates and professional billing rates. Each will be described below. An additional method, cost per unit of work is also used by architects but, because it is used only when dealing with construction of identical units (i.e., apartment buildings units, hotel rooms, etc.) it is seldom encountered in educational facility construction.

1. lump sum is the method whereby the architect is paid fixed dollar amounts for specific services. The amount includes profit, direct salary costs and indirect costs.

2. specific hourly rates whereby the architect is paid fixed hourly rates for each class of employee directly engaged in providing services of indefinite duration. The rates include profit, direct salary costs and indirect costs.

3. professional billing rates, an alternative to specific hourly rates, where the architect is paid fixed hourly rates for specifically named employees engaged in providing services of indefinite extent, plus a percentage, also refered to as a multiple, for indirect and non-reimbursable direct costs and for profit.

The following definitions apply to the terms used above:

1. direct salary costs consist of the actual hourly wage rate for time directly chargable to the project, plus an allowance for payroll overhead.

2. payroll overhead consists of all employee-related costs and personnel benefits, including life and medical insurance, sick leave, vacation and holiday pay, social security, workmen's compensation, pension retirement contributions and other similar employee-related costs. Overtime for non-salaried hourly wage rate employees may be included, if approved in writing by the district.

3. indirect costs include allowable expenses not directly identified with a single project. Indirect costs include both salary and non-salary costs such as general administrative salaries, recruitment of employees, office rents, maintenance and utilities, office supplies, etc. Indirect costs are payable as a multiple or percentage of direct salary costs.

C. Determination of Reimbursable Expenses

In addition to fees, which cover salaries, profit and indirect costs, most projects require the architect to provide services which involve additional expenses. Such direct non-salary costs should be identified specifically as reimbursable expenses which will be paid upon receipt of documentation that the expense was incurred. Transportation and per diem are the most common reimbursable expenses. Others include:

1. cost of subcontracts when these have been identified specifically within the professional services agreement;

2. fees for regulatory approvals paid to authorities having jurisdiction over services provided by the agreement;

3. expenses for telecommunication charges, including telephone, teleconference, telex, etc., incurred in

the provision of services under the agreement;

4. expenses for postage and handling of materials required by the agreement;

5. expenses for reproduction of reports, drawings and specifications in excess of that which would normally be required (usually two copies);

6. computer time for special applications required by the district;

7. expenses for producing specialized or elaborate models, promotional materials and presentations required by the district.

As can be seen by the above listing, the amount of reimbursable expenses allowed is generally under the control of the district; that is, such expenses are triggered by the amount of travel and other activities which the district requires. Because such expenses can mount up quickly, districts are encouraged to set a maximum amount for which expenses will be reimbursed in the agreement itself to avoid future surprises.

D. Determination of Amount of Compensation

Determination of final costs of design services will be the result of negotiation on the various fees schedules asked by the design firm, plus the amount of reimbursable expenses to be allowed by the district. Districts can use several methods in determining the limits of compensation. Perhaps the most common is to use a percentage of construction costs. Compensation for basic services range from 10% of estimated construction costs on small projects to 6% for large projects. Additional services and reimbursable expenses will vary, depending on the extent of services required. Districts are cautioned that construction costs, not total project costs should be used as the basis

for calculation.

Some confusion may exist regarding the application of Section 14.11.020 of Alaska Statutes dealing with Construction, Rehabilitation, and Improvement of Schools and Education Related Facilities. This section limits the costs of construction management to 4% for projects of $500,000 or less and to 3% for projects over $500,000. However, this section refers to the "management of the project's schedule, quality, and budget during any phase of the planning, design, and construction of the facility by a private contractor engaged by the municipality or regional educational attendance area." It does not place a percentage cap on the amount which can be expended for design services.

If a percent-of-construction-costs method is not used, districts must determine another way of establishing the reasonableness of compensation for design services. Other methods could include comparison with other projects completed by the district, design cost ranges for comparable projects being developed by other districts or professional judgement.

Agreements as to the basis and the amount of compensation, maximum amounts to be paid for reimbursable expenses, and the compensation schedule should be set out in the agreement between the architect or architectural firm and the districts.

The Department of Transportation's Professional Services Agreement, Appendix C: Basis of Compensation contains one format which can be useful to districts in setting out the compensation rates and schedule. A more simplified format which

has been used successfully by several districts is included as Appendix B of these Guidelines. Districts are, of course, free to choose the format which is most useful to them in laying out the terms and limits of compensation.

DEVELOPMENT, REVIEW AND EXECUTION OF THE DESIGN CONTRACT

The comments which follow are not in any order of priority nor do they exhaustively discuss or analyze the various trouble spots which may arise. Rather, a few specific areas and concepts are discussed which seem to have caused difficulty in the past or which often appear to be misunderstood.

It should go without saying that the contracting process often raises issues and questions upon which specific legal advice is necessary. These Guidelines are not a substitute for such advice but may raise issues or suggest possible solutions which can be explored with legal counsel.

A. Form Contracts

It is not necessary to reinvent the wheel. There are numerous form contract packages in existence which have been developed by various user groups associated with the construction industry. For example, the AIA publishes forms which are often used by its members and others. The Alaska Department of Transportation and Public Facilities has also developed such forms, several of which have been referenced in other parts of these Guidelines. Other forms are published by contractor and engineering associations. Some municipalities have their own contract forms. As can be imagined, each form has its own constituency and group of adherents.

Architects are understandably fond of the AIA contract forms. There is certainly nothing wrong with the use of form contracts if they are approached knowledgeably and employed properly. They can save a great deal of time and expense over trying to start from scratch. The contract document is extremely important, however, and the contracting agency should use great care in selection of the basic form. All contracts are not created equal.

All contract form packages allow a place for changes and supplementation. It will be a rare project which is suitable for a form contract without such amendment. Some of the comments in these Guidelines, for example, may suggest some areas which would benefit from a change to a form contract. Within reason, forms were meant to be changed and it is a common pitfall to accept provisions in a form contract just because it is a form and not because it says what the district wants it to say. A form contract can give an agency a good place to start, but not necessarily a good place to finish.

B. Contract Correlation

Whether using one of the form contracts as a basic document or not, all the contract documents must ultimately work together as a package.

First, then, districts must be certain that any changes incorporated into the form are made consistently throughout. If, for example, it is determined to delete the arbitration clause, all references to such arbitration must be deleted throughout the contract.

Second, it must be remembered that while these Guidelines focus only on the design services contract, ultimately there must be a construction contract as well if the project is ever going to be built. The duties, rights and responsibilities of the architect—as set out in the design services contract—will have a direct effect on the construction contract and it is essential that the two contracts coincide in that regard.

For this reason it is almost always a bad idea to use one form of design services contract and a different form of construction contract. If, for example, the Department of Transportation's Professional Services Agreement for design services is used, the DOT construction contract form should also be used, since the two forms were obviously drafted so that they would work together. If two "mismatched" contracts (e.g., AIA with DOT contract forms) were used, the provisions of each would have to be carefully analyzed and compared to be certain that all inconsistencies and discrepancies had been caught and corrected. Generally speaking, if a form design services contract is used, it should be used in the way it was intended—as a package with the construction contract as well.

C. Contracting Agency

AS 14.14.060 purports to lay out the relationship between a borough and a borough school district in the design and construction of schools. Although it is not entirely clear, a possible interpretation of that section is that the district is authorized to contract with the architect subject to municipal

approval. The construction of the project, however, is handled and contracted by the municipality.

It is important that the contract documents clearly reflect who the contracting agency is to be. If the municipality has by resolution authorized the school district to act as contracting agency for the design and construction of a certain project, a copy of the resolution should be attached to the professional services contract and made part of the contract by reference.

It is also advisable that the same entity act as contracting agency for the complete project; i.e., both the design and construction of the project. If the municipality does not desire to release its obligation to the district as contracting agency for the construction of the project, then it is preferable that the municipality should act as the contracting agency for the design services as well. Because the design of a project and the subsequent execution of that design are inextricably connected at many points and in many ways, the entity which bears the responsibility and also the liability for the design portion of the project should bear the responsibility and the liability for the construction process as well. This will also simplify matters in the event that claims arise on the project.

This is not to say, for example, that school personnel may not wield substantial authority during the construction process. Generally speaking, however, there should be a single entity which is the "contracting party" for all phases of the project.

D. Indemnity

The "indemnity clause", also known as the "hold harmless clause" is important from the contracting agency's viewpoint. This clause obligates the architect to indemnify and hold the owner harmless from certain kinds of claims. For example, if a floor collapses and someone is injured, and they claim it was inadequately supported, the contracting agency generally wants to assure itself that the architect will be responsible for defending the claim at no cost to the agency.

The Alaska Statutes impose a limit on the kinds of claims that can be indemnified, however. An indemnity clause in any construction contract is void if it purports to indemnify the owner against liability for damages arising from the sole negligence or wilfull misconduct of the owner (A.S. 45.45.900).

Aside from this one limiting factor required by law, the owner wants to ensure that the indemnity language is as broad and all-encompassing as possible. This is particularly true as traditionally indemnity clauses have been strictly construed against the person being protected. It is also important for this reason that the clauses be entirely clear. In the light of this, the district might consider a clause which would indemnify the contracting agency, its officers, agents and employees from liability "of any nature or kind, including costs and expenses, for or on account of any and all legal actions or claims of any character whatsoever alleged to have arisen, in whole or in part, from the contractor's actions."

E. Liquidated Damages

A liquidated damages clause puts "teeth" into the time schedule portion of the architectural contract. It provides that in the event the architect fails to perform in accordance with the contract's time schedule and commencement of construction is delayed as a result, the architect agrees to pay a specified sum to the owner as liquidated damages for each day that the commencement of construction is delayed.

Much like indemnity clauses, liquidated damages clauses are very strictly scrutinized and construed against the owner. They must be crystal clear and must legitimately reflect an attempt to agree upon a delay damages amount rather than operate as a penalty.

Determining the amount for liquidated damages can require some delicate balancing. If the amount is high and the schedule is tight, the architect may increase the cost of services in order to cover the liquidated damages which may have to be paid. On the other hand, the owner must understand that when an amount for liquidated damages for delay is specified, this is all that can be collected, regardless of how much the actual damages may be.

Normally, the liquidated damages clause will also include a provision to the effect that no damages shall be payable for any period of delay for which an extension of time was granted or if the delay was caused solely by the contracting agency.

F. Professional Liability Insurance

There are three important aspects for the owner to consider

when reviewing the architect's professional liability (or "errors and omissions") insurance proposal.

1. Amount of coverage

The amount of coverage provided by the policy is obviously an important consideration. In considering the adequacy of the insurance, the owner must keep in mind that many types of losses which can occur on a construction project as the result of an error or omission on the part of the architect may have virtually nothing to do with the size of the project. A person might, for example, become injured and paralyzed for life through a design error on a $100,000 remodeling project as well as on a $20,000,000 building project. Thus, at least in one sense, the cost of the project is a poor gauge of the necessary amount of insurance coverage. Where the cost of the project does become important is where one is considering an error or omission which damages the project itself as compared to other property or persons. If as a result of architect error, a $20,000,000 project had to be substantially rebuilt, $1,000,000 worth of coverage would hardly be sufficient to cover the damages involved. The owner should keep in mind these considerations, as well as other types of insurance which may cover damage to the project, when weighing the minimum amount of coverage which should be provided through this policy.

Professional liability insurance is a major cost in the business of architecture. The usual range of coverage is between $500,000 and $2,000,000. The cost of increasing the policy limits beyond that normally carried by the architect

will, in most cases, be covered by an increase in design fees.

2. Duration

The duration of this insurance is also an important consideration. An architect's errors and omissions policy will generally cover only those claims made during the policy period. An architect error may not reveal itself during the time of construction, but, instead, wait until after the project is complete and the policy expired. While this may not be totally avoidable, districts may wish to consider a requirement that the policy be maintained for a certain number of years after completion of the project.

3. Limiting liability

One thing the owner generally does not want to do is limit the architect's potential liability to the coverage limits of professional liability insurance. This is not a good idea, for in the case of inadequate coverage there may be other avenues available whereby the owner could recover damages above the face value of the policy.

G. Disputes Clause

The disputes clause provides for a non-judicial method of resolving any dispute that might arise as a result of the parties' contractual relationship. This clause does not supplant judicial review of the dispute, but is a required prerequisite. It allows the contracting agency to get a good review of the claim prior to issuing a decision of the claim and prior to any possible resort to the legal process.

The typical disputes clause would allow for written notice

of the claim to be presented to the contracting agency's project manager who acknowledges the claim in writing. Supporting documentation for the claim must be provided with the claim or on the request of the contracting agency. If meetings between the parties do not result in an agreement within a certain time frame (for example, 60 days), the contracting agency will then furnish a written signed decision to the contractor within 90 days of receipt of all information. This decision will be final unless appeal is taken to the Superior Court within 30 days.

If the architect proposes the use of the AIA form of contract, the district will find an arbitration clause instead of a disputes clause. People's opinions vary as to the use of arbitration versus judicial review. Some claim that arbitration is faster than court review, less expensive, not bound by technical legal rules and allows for flexibility in arriving at the decision. On the other hand, an arbitrator's decision is virtually non-reviewable and since the arbitrator is not bound to apply the law as does a court, the decision could be entirely wrong. There is no chance for prior review of the claim and districts don't always save money. The arbitrator's time and expenses must be paid for, as well as that of any attorneys involved. Also, the "fast" method for review does not always allow for adequate preparation of claims, which could result in a substantial loss.

If an arbitration clause is proposed by the architect, the district may wish to consider deleting it and substituting (or supplementing it with) a disputes clause.

H. Construction Budget/Design Options

It is desirable for the professional services agreement to contain a provision requiring the architect to prepare three different design possibilities, two of them incorporating alternatives which are intended to bracket the budgeted construction funds. The architect will design one project for an estimated 90% of the funds, another for an estimated 100%, and a third for an estimated 110%. This allows a 20% flexibility and may avoid the necessity for rebidding.

If after preparing these alternatives, the low bid is nonetheless less than 90% of the proposed costs, the contract should allow for the architect to redesign the project at no additional cost to the owner. The same should hold true if the bid is over 110%. The owner should be protected against the extra costs and delays of rebidding if the project design is insufficiently ambitious, as well as if it is too ambitious. The architect would bear the cost of redesign if the bids fall outside the 20% flexibility range which is provided.

Footnotes

1. Castaldi, Basil, Educational Facilities, Planning, Modernization and Management, 2nd Edition, Allyn and Bacon, Inc., Boston, Massachusetts, 1982. p. 158.

2. State of Alaska, Department of Transportation and Public Facilities, Appendix B: Standard Statement of Services for General Architectural and Engineering Design, Form SSS/GAED, Juneau, Alaska, 1980. pp. 2-4.

3. American Institute of Architects, Compensation Management System, Form F819, AIA, Washington, D.C., 1975. pp. 1, 2 and 8.

4. State of Alaska, pp. 4-6 and AIA, p. 9.

APPENDICES

APPENDIX A

PERFORMANCE RATING REVIEW

OVERALL EXPERIENCE - (10 points) The entire architectural experience based upon varied projects involvement.

SPECIFICALLY RELATED EXPERIENCES - (10 points) That architectural experience which directly involves construction and design of educational facilities similar to the project.

CAPACITY - (10 points) The ability of the architectural firm to handle the magnitude and complexity of the project.

QUALIFIED STAFF - (10 points) The professional experience of the architectural team to be involved in the project.

ABILITY TO RESPOND (TIMELINE) - (10 points) The ability to meet deadlines as proposed. The ability to respond to the clients' needs.

DESIGN PHILOSOPHY - (10 points) The aesthetic and functional accomplishments of design and construction work performed (appearance, function, quality and technological approach).

COST - (10 points) Percent for design and construction of project.

EXTRA POINTS - (10 points) Additional strengths of architectural firms. Examples include: design problems, limited number of change orders, staying within the architectural contract, communication and work attitude, responsiveness to problem areas, and varied recommendations received from previous clients.

The Scoring Scale

Each area to be rated is to be assigned a numerical value from 0 to 10 by the rater. The following may be referred to as a general guide:

10 - Exceptionally Strong Area
8 - Very Strong Area
5 - Average Strengths
3 - Weak Area
0 - Area Not Addressed

OVERALL EXPERIENCE - (10 points possible)

1. What is the Architect's entire architectural experience based on various projects involvement. Are these experiences relevant to the project?

2. Has the Architect demonstrated familiarity with:

   a. Making facilities accessible to physically handicapped?

   b. Fire safety criteria?

   c. Energy conservation appropriate to Alaska?

3. What does the Architect state regarding the following?

   a. Response to owner (cooperation, management plan, timelines, etc.).

   b. Budget control (design budget, bids, change orders).

   c. Design success (function, user satisfaction).

   d. Aesthetic acceptance (owner and community acceptance).

   e. Maintenance and operation.

   f. Involvement during construction (including construction supervision procedures).

4. What efforts has the Architect made in the past to insure that contract documents include inventory lists detailing spare parts, location of suppliers for spare parts, submittal data, required testing, etc.? If the Architect has made no in-depth efforts in the past, why does he feel he can do so now?

5. What experience does the Architect have in being a project manager, and is he willing to take on this role?

SPECIFICALLY RELATED EXPERIENCES - (10 points possible)

1. What other school design experience has the Architect had? How closely is it related to this project? Have these closely related jobs been successes?

2. What can the Architect state regarding the following about past related experiences:

   a. Response to owner (cooperation, timelines, management plan, etc.).

   b. Budget control (design budget, bids, change orders).

   c. Design success (function, user satisfaction).

   d. Aesthetic acceptance (owner and community acceptance)

   e. Maintenance and operation.

   f. Involvement during construction (including construction supervision procedures).

3. Does the Architect have experience working on facilities similar to those contemplated by the District, with specific reference to experiences in last ten years?

4. What efforts has the Architect made in the past to insure that contract documents include inventory lists detailing spare parts, location of suppliers for spare parts, submittal data, required testing, etc.? If the Architect has made no in-depth efforts in the past, why does he feel he can do so now?

5. Is the Architect familiar with Department of Education regulations?

CAPACITY - (10 points possible)

1. What is the Architect's overall ability to handle the magnitude and complexity of the project? Has a well thought-out plan been developed that explains how the contract will be administered, how sub-contract work will be coordinated, and how the architectural team will be organized?

2. Does the Architect have the office facilities and production capabilities to handle this project?

3. What is the Architect's suggested scope of services?

4. What energy conservation measures would the Architect utilize in this design? Detailed operational cost estimates will be required as part of the basic service (regarding wind-driven rain, solar advantage, light utilization, heating and air-conditioning systems).

5. Would the Architect and sub-consultants be willing to write a complete maintenance and operations narrative for the District as part of the basic services fee?

6. What efforts has the Architect made in the past to insure that contract documents include inventory lists detailing spare parts, location of suppliers for spare parts, submittal data, required testing, etc.? If the Architect has made no in-depth efforts in the past, why does he feel he can do so now?

7. Will the Architect and sub-consultants assist in a one-year post-occupancy inspection in order to evaluate maintenance and operations at no increase in basic services fee?

8. What other information do you feel is important about your firm that will justify your selection over other firms?

QUALIFIED STAFF - (10 points possible)

1. Who are the members of the architectural team to be involved in the project? What is the professional experience of each of the team members? Does the Architect and/or architectural team have backgrounds appropriate for handling the project?

2. The School District would like to choose from candidates from the Pacific Northwest.

3. What are the names and addresses of the Architect's proposed sub-consultants? Are they "in-house"? Is the Architect flexible on the choice of electrical and mechanical sub-consultants? What is the usual turn-around time for completion of electrical, mechanical, and structural components?

4. Does the Architect recommend that the contractor or the mechanical engineer balance all mechanical equipment?

ABILITY TO RESPOND (TIMELINE) - (10 points possible)

1. Does the Architect show a willingness to be sensitive to community needs, and will he welcome involvement of community representatives? Is the Architect willing to work with District personnel in the ongoing process to make necessary modifications?

2. What schedule and guidelines would the Architect suggest in order to plan and coordinate the design of the facility with community participation and approval?

3. Can the Architect suggest a time schedule indicating when the design, bidding and award, and construction phases will be completed?

   a. What techniques has the Architect employed on past projects to ensure the set time schedule is met?

   b. Does the Architect recommend a construction completion schedule for mid-winter? If so, what are the advantages and disadvantages to the District?

   c. Does the Architect have the staff and capability to have the construction documents completed along District timelines? Who will be working on the project? List by discipline and by name.

   d. What is a realistic period of time to have a set of completed plans that denote actual construction? (Give some timelines.)

4. What design and construction problems have you encountered on similar projects, and how can they be avoided?

5. Could the Architect assist the District with the selection of all equipment and furnishings? What additional fees would be required for this service?

6. Would the Architect and sub-consultants be willing to write a complete maintenance and operations narrative for the District as part of the basic services fee? Would the Architect and sub-consultants be available for a few days to perform start-up of a new facility and give complete maintenance instructions as part of the basic fee?

7. Can the Architect coordinate design to provide a place for the Work of Art? How could this effort be coordinated with the community? Will this service be included in the basic cost?

DESIGN PHILOSOPHY _ (10 points possible)

1. Does the Architect have the ability to produce an excellent design for the project? (This should be based upon the aesthetic and functional accomplishments of the design and construction work performed--appearance, function, quality, and technical approach.)

2. What is the Architect's design philosophy for this project (including life-cycle cost factors and aesthetic values)?

3. Is the Architect familiar with the various design standards (i.e., fire, handicapped)?

4. Can the Architect coordinate design to make provision for art works? How could this effort be coordinated with the community?

COST - (10 points possible)

1. What is the percent to be charged for design and construction of the project?

2. What are the costs per square foot estimated to be for the area for various types of school construction?

3. What is the Architect's suggested scope of services? What is the expected fee for these basic services? What is the estimated cost of reimbursable services?

4. Does the Architect see any budgetary constraints with the funds available for these projects?

EXTRA POINTS - (10 points)

1. Additional strengths of the Architect's firm. Examples include: design problems solved, services available during construction, change order experience, staying within the parameters of the architectural contract, communication and work attitudes, responsiveness to problem areas, and various recommendations received from previous clients.

PERFORMANCE RATING CHART

Architectural Firm	Overall Experience	Related Experiences	Capacity	Qualified Staff	Ability To Respond	Design Philosophy	Cost	Extra Points	Total Point Rating
	10 pts.	10 pts.	10 pts.	10 pts.	10 pts.	10 pts.		10 pts.	

APPENDIX B

SAMPLE SCHEDULE OF COMPENSATION

This sample schedule provides one method whereby the fees and expenses for each basic and additional service may be displayed in the agreement for design services. The form is a sample only and would need to be modified to reflect only those services which are to be provided by the architect or architectural firm.

BASIC SERVICES

Description of Services	Agreement Reference	Days for Completion	Method of Pay	Compensation Fees	Compensation Expenses
Schematic Design					
Design Development					
Construction Documents					
Bid Services					
Construction Services					

In addition to the above, services may be required of the architect during the following phases of the project:

Pre-design Services					
Site Selection					
Post-Construction Services					

Additional Services (Examples)

Feasibility Study					
Energy Audit					
Meetings & Presentations					